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Yoshiko Mikami

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CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP

STEVEN M. GREENBERG

950 PENINSULA CORPORATE CIRCLE

SUITE 2022

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WHIPPLE, BRIAN P

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YOSHIKO MIKAMI

Appeal 2009-006640
Application 10/632,160
Technology Center 2400

Before HOWARD B. BLANKENSHIP, STEPHEN C. SIU, and DEBRA K.
STEPHENS, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-11. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

The invention relates to a network system delivering content to computers networked to a server (Spec. 1, ¶ [0001]).

Claim 1 is illustrative:

1. A method for use in a network system comprising:
storing at a host computer profile information relating to individual users of the host computer, the profile information for a first user and a second user identifying host applications that the first user and the second user, respectively, are permitted to execute,
in response to a request from the first user identifying a list of one or more applications that the first user is permitted to execute, storing the list in the profile of the second user, whereby the second user is permitted to execute the applications in the list under control of the first user.

References

The Examiner relies on the following references as evidence in support of the rejection:

Walker	US 6,286,001 B1	Sep. 4, 2001
Gatz	US 2002/0049806 A1	Apr. 25, 2002

Rejection

Claims 1-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gatz and Walker.

ISSUES

Issue 1

Appellant “submits that the Examiner’s analysis is not based upon a common sense rationale, as supported by the teachings of the applied prior art [T]he Examiner’s proposed modification and asserted rationale for the modification are essentially the same” (Reply. Br. 2-3).

Issue: Did the Examiner err in concluding that it would have been obvious to an artisan to combine the teachings and suggestions of Gatz and Walker?

Issue 2

Appellant argues that “[n]either Walker nor Gatz appear to teach . . . a list of one or more application[s] that the parent is permitted to execute since the parent (supervisor, etc.) appears to have access to the application by default” (App. Br. 8).

Issue: Did the Examiner err in finding that Gatz and Walker would have taught or suggested identifying a list of one or more applications that a first user is permitted to execute and a second user that is permitted to execute the applications in the list under control of the first user?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence:

1. Gatz discloses

[a]n access server [that] controls use of services in an account based access server and includes a database of users, a data structure associating users identified as parents with parent accounts, users identified as children

with child accounts and associating parent accounts with child accounts in family accounts.

(Abst.).

2. Gatz discloses that “a holder of a child account is configured by an access server such that the holder cannot participate in any auction, and will not be permitted access to . . . any other area that the adult deems inappropriate. . . . [C]ertain restrictions might be overridden by a controlling parent” (§ [0075]).
3. Walker discloses “[a] browser capable of accessing only web pages previously authorized by a parent or supervisor of a user of the browser” (Abst.).

PRINCIPLES OF LAW

Claim interpretation

“In the patentability context, claims are to be given their broadest reasonable interpretations. . . . [L]imitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citations omitted).

Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results,”

KSR Int’l Co. v. Teleflex, Inc., 550 U.S. 398, 416 (2007), especially if the combination would not be “uniquely challenging or difficult for one of ordinary skill in the art,” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418).

ANALYSIS

Issue 1

Appellant argues that the Examiner provides insufficient rationale for finding that it would have been obvious to an artisan to combine the teachings and suggestions of Gatz and Walker. Based on Appellant’s arguments in the Appeal Brief, we will decide the appeal with respect to issue 1 on the basis of claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The teachings and suggestions of Gatz and Walker are both related. Gatz relates to an access server the controls use of services based on children accounts that are associated with parent accounts (FF 1). Walker relates to a browser capable of accessing only web pages previously authorized by a parent of a user of the browser (FF 3). Because the two references are related, the teachings and suggestions of Walker would have been familiar elements to an artisan seeking to modify Gatz, and vice versa.

Appellant does not show that the Examiner’s proposed combination of the familiar elements of Gatz and Walker would have done anything more than yield predictable results. Therefore, we find no error in the Examiner’s finding that it would have been obvious to an artisan to combine the teachings and suggestions of Gatz and Walker.

For at least these reasons, we are not persuaded of error with respect to this issue in the Examiner’s 35 U.S.C. § 103(a) rejections of claims 1-11.

Issue 2

Appellant argues that neither Walker nor Gatz teach a list of one or more applications that the parent is permitted to execute. Based on Appellant's arguments in the Appeal Brief, we will decide the appeal with respect to issue 2 on the basis of claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellant argues that "Gatz does not explicitly teach the claimed list of one or more application[s] that the first user is permitted to execute" (App. Br. 5). However, Appellant later admits that "the parent (supervisor, etc.) [in either Walker or Gatz] appears to have access to the application by default" (App. Br. 8). Based on this admission, Walker and Gatz at least suggest one or more applications that a first user is permitted to execute (i.e., that they have access by default). Gatz discloses that a controlling parent can override restrictions on a child account's ability to use services, such as participating in auctions or accessing areas deemed inappropriate (FF 2). Therefore, Gatz and Walker would have taught or suggested identifying (overriding) a list of one or more applications (restrictions on services) that a first user (a parent) is permitted to execute (can access by default) and a second user (where the overriding is for a child account) that is permitted to execute the applications (enabling the child account to access restricted services) in the list under control of the first user (as permitted by the controlling parent).

Appellant offers that "even if the parent inherently had access to the applications, the parent . . . may not be permitted to use the application (e.g., the parent chooses not to have access to the application or the parent is required to sign up for [the] application, in order to use[] the application, and

the parent has not)” (App. Br. 6-7). This attempt to distinguish between having access to an application and having permission to execute an application is unpersuasive. The claim language does not limit the list of applications to only include applications that the first user is permitted to execute without any additional steps. Additional steps, such as choosing to have access to or signing up to use, are not precluded by the claim limitations.

For at least these reasons, we are not persuaded of error with respect to this issue in the Examiner’s 35 U.S.C. § 103(a) rejections of claims 1-11.

CONCLUSIONS OF LAW

Based on the findings of facts and analysis above, we find no evidence persuasive of error in the Examiner’s:

1. conclusion that it would have been obvious to an artisan to combine the teachings and suggestions of Gatz and Walker (issue 1) and
2. finding that Gatz and Walker would have taught or suggested identifying a list of one or more applications that a first user is permitted to execute and a second user that is permitted to execute the applications in the list under control of the first user (issue 2).

DECISION

We affirm the Examiner’s decision rejecting claims 1-11 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2009-006640
Application 10/632,160

AFFIRMED

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CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP
STEVEN M. GREENBERG
950 PENINSULA CORPORATE CIRCLE
SUITE 2022
BOCA RATON, FL 33487